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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,080	04/13/2004	Brian Andrew Kendall	PAWO122425	3159
26389 7590 01/23/2009 CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347				
EXAMINER				
MORGAN JR, JACK HOSMER				
ART UNIT		PAPER NUMBER		
3782				
MAIL DATE		DELIVERY MODE		
01/23/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/823,080

**Applicant(s)**

KENDALL ET AL.

**Examiner**

JACK H. MORGAN JR

**Art Unit**

3782

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,6-11,14,28-30,32-36,38-41 and 43-50 is/are pending in the application.  
4a) Of the above claim(s) 45 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,2,6-11,14,28-30,32-36,38-41,43,44 and 46-48 is/are rejected.  
7) ☒ Claim(s) 49 and 50 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-846)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 3, 2008 has been entered.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 6-8, 10, 11, 14, 28-30, 32-36, 38, 43, 44 and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makowka (US 4,834,552) in view of Hovland (US 3,265,287). Makowka discloses an envelope (Fig 2) defining a cavity and having a flap closure with an adhesive closure (28, 30), formed from a plurality of multilayer co-extruded polyethylene film (Col 4, lines 1-7) one film being translucent and another being opaque (Col 4, lines 18-21), these being synthetic materials. Makowka does not disclose a tearable closure for the envelope having rows non-perforating perforations, wherein when the flap is in the closed position the first side (having the

perforations) is an inner side. Makowka also does not specifically disclose two three layer co-extruded polyethylene films.

Hovland discloses a similar container having a tearable adhesive closure flap (29, 26, 25) with perforations (2) in an outer layer but not an inner layer in order to provide tamperproof opening means which maintains the freshness of the articles held within. It would have been obvious to one of ordinary skill in the art at the time of invention to create the envelope of Makowka with the non-penetrating perforation closure flap of Hovland in order to provide tamperproof opening means to the envelope of Makowka.

While Hovland teaches the perforations to be on the outside of the flap and the continuous side to be on the inside of the flap, it would have been obvious to one having ordinary skill in the art at the time the invention was made to put the perforations on the inside of the flap in order to provide a smooth outer surface. It has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to create the envelope out of two three layer co-extruded polyethylene films in order to provide a stronger package. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

In regards to claim 44, examiner takes official notice that it is well known in the art to provide a cover strip for adhesive closures in order to prevent the adhesive from prematurely attaching. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the envelope adhesive of Makowka with a cover strip in order to prevent premature adhesion.

In regards to claim 46, the envelope of Makowka reads on the claimed limitation of "bag".

In regards to claim 47, Makowka discloses the flap being of either a continuous film of homogeneous composition, or alternatively being two polymer films bonded together. Furthermore, the line of perforations as taught by Hovland could be seen as the "score lines" that extend through a portion of the thickness, insofar as applicant's claims define score lines.

3. Claims 9, 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makowka (US 4,834,552) in view of Hovland (US 3,265,287) as applied to claims 1 and 38 above, and further in view of Christiansen et al. (US 3,650,463). Makowka as modified above discloses all the limitations of the claims except for there being two parallel rows of perforations along an edge of the container from end to end of the flap and a pair of nick ends within the boundaries of the rows. Christiansen et al. discloses an envelope (Fig 1) having two rows of perforations (8) along the edge of the flap with nick ends (13, 14) within the rows in order to provide an easy to use openable closure for an envelope. Therefore it would have been obvious to one of ordinary skill in the art at

the time of invention to create the envelope of Makowka as modified above with two rows of perforations from end to end along the flap and a pair of nick ends in order to provide an easy to use openable closure.

4. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Makowka (US 4,834,552) in view of Hovland (US 3,265,287) as applied to claim 1 above, and further in view of Jacob (US 4,607,749). Makowka as modified above discloses all the limitations of the claims except for a plurality of score lines from lengths end to lengths end of the flap, instead disclosing perforations. Jacob discloses an envelope which is openable using score lines (24) instead of perforations, in order to provide an openable closure (Col 2, lines 27-29) by tearing the envelope in a controlled manner. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the envelope of Makowka as modified above with the score lines of Jacob in order to open the envelope by tearing in a controlled manner.

***Allowable Subject Matter***

5. Claims 49 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 28, 32, 38, 47 and 48 have been considered but are moot in view of the new ground(s) of rejection. While applicant argues that Hovland teaches away from disposing perforations on the inner layer of the sealed package, by teaching an imperforate inner layer, examiner does not find that argument persuasive. Hovland teaches having a perforated layer (his outside) and then an imperforate layer (his inside), but it would have been obvious to one of ordinary skill in the art to reverse the location of the two, as set forth above.

***Conclusion***

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACK H. MORGAN JR whose telephone number is (571)272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan  
Examiner  
Art Unit 3782

/Nathan J. Newhouse/  
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